

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014060666

ORDER FOLLOWING PREHEARING
CONFERENCE AND SETTING DUE
PROCESS HEARING DATES

On October 6, 2014, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Brett S. Allen, Attorney at Law, appeared on behalf of Student. David Mishook, Attorney at Law, appeared on behalf of the Oakland Unified School District. The PHC was recorded. Based on discussion of the parties, the ALJ issued the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on October 14 through October 16, and October 21, 2014, and shall continue day to day, Monday through Thursday at the discretion of the ALJ until the hearing is concluded. The hearing shall be held at OAH's offices located at **1515 Clay street Suite 206, Oakland, CA 94612**. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m. each day, with the exception of October 14 and 21 when the hearing shall begin at 9:30 a.m., unless otherwise ordered.

OAH will ensure that all facilities used during the hearing are compliant with the requirements of the Americans with Disabilities Act, and will ensure that due process hearing location and room are appropriate for the hearing and accessible to all persons. The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing and the requested proposed remedies are as follows:¹

A. ISSUES:

- 1) From June 10, 2012 to the present, did Oakland deny Student a free appropriate public education by failing to conduct neuropsychological and/or behavior assessments of Student?
- 2) From June 10, 2012 to the present, did Oakland deny Student a FAPE by failing to tailor appropriate educational program to meet Student's individual unique needs because Oakland:
 - a. failed to provide a one-to-one tutor;
 - b. failed to provide counseling services to Student;
 - c. failed to provide Student with an aide; or
 - d. failed to provide appropriate goals?
- 3) From June 10, 2012 to the present, did Oakland deny Student a FAPE by failing to provide Student's Parents with a full and complete copy of Student's educational record?

B. PROPOSED REMEDIES. As proposed resolution, Student requests that OAH directs Oakland to: 1) fund independent assessments in the areas of neuropsychological and behavior; 2) provide compensatory education to Student including an intensive one-to-one academic instruction and/or educational therapy, school-based counseling, private counseling and tutoring; 3) reimburse Parents for costs of all educational related expenses and counseling services provided to Student by Parents within the statutory period; 4) fund placement of Student in a nonpublic school; 5) provide Parents with all of Student's educational records; 6) pay Parents' attorney's fees; and 7) provide other relief as ordered by OAH.

¹ The issues at the due process hearing are as alleged in Student's due process complaint as clarified at the PHC. Any issue(s) that is not listed and/or permitted by this order shall be included only with an amendment to a due process complaint. The amendment shall comply with California Education Code section 56502, subdivision (e). The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

3. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits “at least” five business days prior to the hearing. The OAH’s scheduling order dated June 13, 2014, ordered the production of lists of all witnesses and documents by an earlier date, namely, at least three business days prior to this PHC. As of the date of the PHC, both parties have disclosed their respective witnesses and exhibits through their prehearing conference statements.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties may use numbers or letters to identify exhibits. If numbers are used by both parties, each party shall place the letter “S” or “D” in front of the exhibit to designate if it is a Student or Oakland’s exhibit (for example, D-1, D-2). Each exhibit shall be internally paginated by exhibit, or all of a party’s exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used. Exhibit binders shall be exchanged five business days prior to the hearing in accordance with Education Code section 56505, subdivision (e)(7), unless the parties agree to a later date.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing, unless good cause is shown as to why it was not previously exchanged. The parties shall be prepared to make such an offer of proof. The ALJ shall determine whether an exhibit is to be admitted into evidence. Only exhibits relevant to the issues previously stated in this order shall be admitted, unless used for impeachment purposes. The fact that an exhibit is placed in an exhibit binder does not guarantee its admission.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party’s prehearing conference statement except for good cause shown, and at the discretion of the ALJ.

As of the day of the PHC, Student has identified and disclosed 32 witnesses, and Oakland has disclosed 31 witnesses. The parties shall meet and confer regarding the schedule and order of witnesses. The parties agreed to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is irrelevant, repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Parties shall be prepared to make an offer of proof, if asked, as to why a specific witness’ testimony is necessary. At the commencement of the hearing, each party shall provide the ALJ with a schedule of witnesses and a time estimate for each witness’ direct and cross-examinations.

The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take. In the case of witnesses who have professional licenses and credentials, it is strongly recommended (but not ordered) that the party calling such witnesses be prepared to present copies of their *curriculum vita* (CV) or resume as exhibits, and exchange them with the other party.

6. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

7. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by telephone shall move in advance for leave to do so. Such party shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing, and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

8. Motions. Other than as may be included herein, no pretrial motions are pending. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of October 6, 2014. The following motion was heard and determined at the prehearing conference:

- i. Order Granting Student's Motion To Record the Proceedings: Student moved to be permitted to digitally record the due process hearing proceeding. Oakland did not oppose the motion. Permitting a party to record the hearing is a matter within the discretion of the ALJ. (1 C.C.R. § 1030, subd. (c).) Student's motion is granted. Student's recording of the proceedings shall not interfere with the hearing. Any recording made pursuant to this order shall not be part of the official record, and OAH'S RECORDING WILL BE THE ONLY AND OFFICIAL RECORD FOR THE DUE PROCESS HEARING.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form if possible.

10. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off during the hearing unless permission to the contrary is obtained from the ALJ.

11. Compensatory Education and Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Special Needs and Accommodations. At present neither party has requested any special accommodation for a witness or party. Neither party has requested interpreter services.

13. Order of Presentation of Evidence: Student filed this matter. Therefore, Student shall produce his evidence first. Where Student and Oakland intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once.

14. Hearing Closed To the Public. At the request of the Student, the hearing shall be closed to the public.

15. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. If the parties believe a mediator may assist them in settlement negotiations, they should submit a request for mediation as soon as possible. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY BEFORE THE HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE AT 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

16. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: October 6, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings